THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.6450 of 2006

13.9.2006

Between:

M/s.Sri Sai Ganesh Enterprises, represented by
S.Rajeshwar, S/o.S.Balakistaiah

... Petitioner

AND

The Superintending Engineer, Operations, Medak Circle,
APCPDCL Quarters at Sangareddy, Medak District
And another

... Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.6450 of 2006

ORDER:

The petitioner filed the instant writ petition seeking a declaration that the action of the first respondent in cancellation of contract awarded to the petitioner and awarding the same to the second respondent as illegal and arbitrary. He seeks a consequential direction to the first respondent for awarding the contract to the petitioner.

The first respondent invited tenders on 09.8.2002 from eligible persons for installation of latest Xerox machines with operator at the office of the respondent at Sangareddy upto 31.3.2003. The petitioner became successful bidder and installed Xerox machine at the office of the first respondent. He was doing the work to the satisfaction of the respondent. It is alleged that the first respondent, without cancellation of tender or issuing any notice, cancelled the work awarded to the petitioner by forfeiting the earnest money paid by him. It is also alleged that the first respondent awarded the work to the second respondent, who did not even submit tender and his name was not even included in the list of tenders. Aggrieved by the same, the present writ petition is filed.

It is now well settled that the question of arbitrariness in awarding of contract can be raised only at the pre-award stage of contract. At the moment the contract is awarded, such argument is not available to an aggrieved person. He has to seek appropriate remedy in Civil Court.

In **Radhakrishna Agarwal v State of Bihar**[1], the Supreme Court held that power to enter into contract is not always regulated by the Constitution. The relationship of persons to the contract is regulated

by the contract. The State as well as other persons to the contract is bound by the obligations in the contract. Though the relationship between the persons to the contract is not the relationship of master and servant, after entering into contract, the relations are no longer governed by the constitutional provisions, but by the legally valid contract. The remedy under Article 226 of the Constitution of India is not a proper remedy for redressing the grievance of the parties to the contract. The following observations of the Apex Court in **Raghakrishna Agarwal** (supra), further lay down as under.

> … … Even if the appellants could be said to have raised any aspect of Article 14 of the Constitution and this Article could at all be held to operate within the contractual field whenever the State enters into such contracts, which we gravely doubt, such questions of fact do not appear to have been urged before the High Court. And in any event, they are of such a nature that they cannot be satisfactorily decided without a detailed abduction of evidence, which is only possible in ordinary civil suits, to establish that the State, acting in its executive capacity through its officers, has discriminated between parties identically situated. On the allegations and affidavit evidence before us we cannot reach such a conclusion. More over, as we have already indicated earlier, the correct view is that it is the contract and not the executive power, regulated by the Constitution, which governs the relations of the parties on facts apparent in the cases before us.

In view of the settled position, a writ petition is not maintainable and it is accordingly dismissed. No costs.

(**V.V.S.RAO,J**)

September 13, 2006.

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[1] AIR 1977 SC 1496